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(INSTALLATIONS AND ENVIRONMENT)
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**PREPARED FOR THE HOUSE COMMITTEE ON RESOURCES:
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INTRODUCTION

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE,

I am pleased to have this opportunity to address this Subcommittee today to discuss the growing challenges faced by the Department of Defense (DoD) in protecting marine mammals while balancing such protection against DoD's mandate to maintain readiness, and the relationship of this effort to HR 4781, the reauthorization of the Marine Mammal Protection Act. As you know, DoD is undertaking a major effort to address encroachment, sustain our training and testing ranges, and maintain force readiness. The DoD Readiness and Range Preservation Initiative is a comprehensive, DoD-wide strategy intended to mitigate or resolve the adverse impacts of encroachment on training and testing lands and waters and to sustain our ranges and operating areas for the future. I look forward to discussing the goals and elements of this initiative with the members of this Subcommittee today.

Today's hearing takes particular interest in the ability of our Naval forces to train realistically while at the same time protect marine mammals. We are not asking for an exemption from our environmental responsibilities -- rather, DoD is seeking to strike a sensible balance between these two national imperatives. Our existing ranges and our ability to conduct training and testing realistically and effectively are critical to the continuing readiness of our Armed Forces.

DoD is seriously concerned with sustaining quality training for all our men and women in uniform. The challenges we face in maintaining quality training and testing opportunities, and the readiness implications of these challenges, have been the subject of previous hearings, and you will hear more today.

MILITARY READINESS AND THE CHALLENGE OF ENCROACHMENT

As the members of the Subcommittee are aware, training of our armed forces and the testing of our systems is a complex undertaking, and their proper execution raises considerable challenges. We must also protect public safety, community welfare, and the natural heritage of our training and testing areas. These are all fundamental national priorities, of extreme importance to the Defense Department, to Congress, and to the American public. DoD works hard to ensure we meet our obligations in all these areas. But foremost in the minds of every military commander is the ultimate readiness of our men and women in uniform; it is such readiness that saves lives in combat and ultimately allows us to win battles.

Train as we Fight

The most fundamental military readiness principle is that **we must train as we intend to fight**. Training our forces and testing our weapon systems under realistic combat conditions is not a luxury. It is a commitment to the American people. The military mission is unique—we carry out our training and testing not for profit or personal gain but to ensure the readiness of our forces. The ability of the military to fight and win our nation's wars is tied directly to readiness resulting from realistic training. There is no substitute for realistic training as there is no substitute for victory.

The land, sea, air, and space that we use to test our weapon systems and train our personnel are irreplaceable national assets. The bottom line is that our soldiers, sailors, airmen, and marines—and the

equipment they go into battle with—are only as good as the fidelity of the training and testing they receive. DoD ranges are the means by which we accomplish these most fundamental readiness principles.

Ultimately, our military forces must be able to move faster, shoot more accurately, and communicate better than our enemies—that is what wins wars, and these capabilities are only achieved through rigorous, continuous, and realistic training. The United States possesses a unique military advantage over all other countries—our nation has historically shown a willingness to dedicate the air, land, sea and frequency spectrum needed to keep our armed forces at peak readiness levels. The military must be able to fight and win wars on short notice—Afghanistan demonstrates this fact. Top-notch readiness requires top-notch training and testing.

The Growing Threat of Encroachment

There is a growing realization that our ability to train and test is being compromised by external factors. For lack of a better term, we have called this overall problem “encroachment.” DoD defines encroachment as the cumulative result of any and all outside influences that inhibit necessary training and testing. Among the many things that cause it: environmental and natural resources compliance requirements that over the past 30 years have reduced range access and the flexibility required for training and testing; unplanned or incompatible commercial or residential development around previously remote ranges; the loss of bandwidth for communications and interference with the frequency spectrum that remains; increased airspace congestion that limits military aircraft access to the ranges or lengthens flying times; and the growing understanding that long-standing munitions use on our ranges can produce environmental challenges. Such encroachment is a worldwide problem, not limited to just our domestic training and testing facilities. Though the exact causes of encroachment vary from range to range and from one part of the globe to another, the effects on training and testing, both at home and abroad, pose increasing challenges to readiness.

I must emphasize, however, that DoD takes its stewardship responsibilities seriously. Environmental stewardship is essential to the Department's mission. With a mandate to train U.S. military personnel and insure they are ready to respond to any call, forces train on over 25 million acres of land and several hundred thousand square nautical miles of ocean operating areas near our coast. The men and women in uniform – as well as our civilian employees – take understandable pride in their environmental record – a record with documented examples of impressive management of critical habitats and endangered species.

In recent years, however, novel interpretations and extensions of environmental laws and regulations have significantly restricted the military's access to and use of military lands, oceans, and operating areas. It has also limited our ability to maneuver our forces and have them engage in live weapons systems training and testing, keys to the future combat readiness of the Armed Forces. Unless addressed appropriately, the military services will continue to see an erosion of the training environment. In some cases, litigation threatens to thwart the primary mission of key military facilities.

COMPREHENSIVE STRATEGY

Our ability to balance readiness against the environmental regulations and the press of other encroachment factors is being severely strained. In some cases, we are losing or are threatened with the loss of access to training and testing spaces we have traditionally used. Yet maintaining the readiness of our forces is one of the highest priorities of the Department. That is why it is also critical that we strive to maintain a reasonable balance between training requirements and the importance of sound environmental stewardship. The Readiness and Range Preservation Initiative is the Department's comprehensive effort to ensure that readiness is maintained in the face of encroachment. This effort consists of five major focus areas: 1) Leadership and Organization, 2) Policy and Plans, 3) Programs and Funding, 4) Outreach, and 5) Legislation and Regulation. We believe that collectively these elements represent the necessary components to a comprehensive strategy.

Legislative and Regulatory Proposals

Historically, specific readiness problems have been addressed at individual ranges, most often on an *ad hoc* basis. We have won some of these battles, and lost others. But in the aggregate we are quite literally losing ground. We no longer have the luxury of expending scarce resources to address the problem in an *ad hoc* manner. It is apparent that we need to deal with the many challenges that are curtailing range operations in a more comprehensive way. It is also why, this Administration, after careful inter-agency deliberation, submitted to Congress “The Readiness and Range Preservation Initiative” as part of the annual defense authorization bill. The thrust of this legislation is:

- Narrowly tailored to protect military readiness activities, not the whole scope of Defense Department activities,
- Prevents further extension of regulation rather than rolling back existing regulation, and
- Enhances the synergy between military readiness and environmental protection by including provisions encouraging creation of environmental buffer zones around military facilities.

Each of our proposals, including the provision related to the Marine Mammal Protection Act, are Limited to Military Readiness Activities. Our initiatives have been portrayed by some as attempting to “exempt” and “grant special reprieve” to DoD from environmental statutes, “give the Department of Defense a blanket exemption to ignore our laws,” and violate the principle that “no government agency should be above the law.” In reality, our initiative would apply only to military readiness activities. We believe we must recognize the military’s unique duty to prepare for and win armed conflicts - unlike any private organization, State, or local government. The requested changes are therefore narrowly focused on “military readiness activities” – those actions necessary to discharge that duty. They will not affect DoD’s

compliance with environmental laws in the management of its infrastructure or industrial operations that are similar to those of private companies.

We Do Not Seek “Exemptions” from Environmental Law. Our initiative does not seek to “exempt” even our readiness activities from the environmental laws. Rather, it clarifies and confirms existing regulatory policies that recognize the unique nature of our activities. As for the Marine Mammal Protection Act, our proposal would codify the Clinton Administration’s proposed policy on “harassment”, which I will addresses further later in my testimony.

We Remain Committed to Environmental Compliance. There has been concern expressed that the proposed legislation foreshadowed a DoD retreat from its environmental responsibilities. DoD has no intentions of backing away from our environmental stewardship responsibilities. We remain fully committed. What we do seek are a few changes to the manner that some requirements apply SPECIFICALLY to “military readiness activities” - training our Soldiers, Sailors, Airmen, and Marines in the skills that they need. The changes are carefully focused on those actions necessary to discharge the military’s unique duty to prepare for and win armed conflicts in the defense of the liberties of the Nation. With the appropriate legal and administrative framework, the goals of environmental protection and realistic military training can be reconciled. The Readiness and Range Protection Initiative does nothing more, and nothing less, than establish that framework for the 21st Century.

“HARASSMENT” UNDER THE MARINE MAMMAL PROTECTION ACT

The NUMBER ONE warfighting challenge for the Navy is its inability to fully train in anti-submarine warfare (ASW). In each potential theater scenario, anti-submarine warfare is the single most important concern for the Navy to accomplish its mission. The MMPA directly impacts the Navy’s ability to test, evaluate, develop, and field systems and to train sailors to use those systems. As a result, the Navy

is behind the power curve.

The Administration's proposed legislative clarification under the Readiness and Range Preservation Initiative would codify the National Research Council's earlier recommendation that the current overly broad definition of "harassment" of marine mammals, which includes "annoyance" or "potential to disturb," be focused on biologically significant effects. As recently as 1999, the National Marine Fisheries Service asserted that under the sweeping language of the existing statutory definition, harassment "is presumed to occur when marine mammals react to the generated sounds or visual cues"—in other words, whenever a marine mammal notices and reacts to an activity, no matter how transient or benign the reaction. During late 1999 and early 2000, the Departments of Commerce, Interior, and Defense, and the Marine Mammal Commission worked collaboratively to develop a definition of "harassment" acceptable to all affected agencies. These efforts to refine this overbroad definition led to both administrative actions and legislative reform proposals. The Administration's proposed legislation adopts this agreed upon definition of "harassment" that will help balance two national imperatives – Military Readiness and Environmental Conservation.

Navy's Conservation Efforts

Military commanders have done an exemplary job of protecting and restoring natural resources in areas used to train the military. As I have stated, **DoD is not trying to rollback environmental oversight—we are committed environmental stewards of our natural resources, and will continue to be so.**

As it relates to marine mammal protection, an example of DoD's conservation and compliance oversight effort is the Navy Policy regarding the protection of Northern Right Whales (NRWs). The Navy employs year round measures designed to protect whales and other endangered species. Shipboard protective measures include: two trained lookouts with binoculars on surface ships, one trained lookout with binoculars on surfaced submarines, extreme caution and safe speed in the consultation area, extreme caution

and slow safe speed within 5 nautical miles of any Northern Right Whale sighting location less than 12 hours old.

If Northern Right Whales are sighted, speed will be reduced to a minimum at which headway may be maintained. Furthermore, vessels will maneuver to maintain 500 yards distance from observed Northern Right Whales. And even though U.S. Naval vessels represent 5% of the total ship traffic transiting the Northern Right Whales migratory route, the Navy also partially funds state Fish and Wildlife agencies' effort to patrol the Northern Right Whales migration route with light aircraft to spot and report sightings.

On 10 March 2000, the Marine Mammal Commission thanked the Navy for its continuing attention to NRWs and commented that the Navy's efforts were a noteworthy example of its attention to critical environmental protection needs.

The Navy is also using its expertise in underwater sound to detect and monitor marine mammals in several ocean regions, particularly the behavior of the large baleen whales in the North Pacific Ocean in the deep ocean basins. The "calls" of these large mammals can be detected by Navy sensors hundreds of miles away and have furnished scientists indications of sub-populations, migrations routes, and habitats. Techniques of this initial work are transitioning to other practical applications where Navy is leading development of a marine mammal census solely by detecting and processing marine mammal vocalizations. The Navy is investing \$18 million over the next 3 years in marine mammal research.

The Navy also conducts ocean-going surveys to establish population densities of marine mammals in our Operating Areas. Marine Mammal Density Data (MMDD) will also include further study on assessing the impact of Navy training on protected and endangered species. This component of the Navy's current research program seeks to increase the level of knowledge of marine mammal population densities, distribution, and hearing physiology.

Summary

DoD firmly believes that the Administration's proposed legislative clarification to the harassment definition would not have any significant environmental impacts, while its benefits to readiness would be critical. The legislation is endorsed by the National Research Council and reflects an agreement among the affected agencies. Although excluding transient, biologically insignificant effects from regulation, the MMPA would remain in full effect for biologically significant effects—not only death or injury but also disruption of significant activities. The Defense Department already exercises extraordinary care in its maritime programs: all DoD activities worldwide result in fewer than 10 deaths or injuries annually (as opposed to 4800 deaths annually from commercial fishing activities). DoD currently funds much of the most significant research on marine mammals, and will continue this research in future.

On the other hand, application of the current hair-trigger definition of “harassment” has profoundly affected both vital R&D efforts and training. Navy operations are expeditionary in nature, which means world events often require planning exercises on short notice. This challenge is especially acute for the Atlantic Fleet, which over the past two years has often had to find alternate training sites for Vieques. To date, the Navy has been able to avoid the delay and burden of applying for a take permit only by curtailing and/or dumbing down training and research/testing. For 6 years, the Navy has been working on research to develop a suite of new sensors and tactics (the Littoral Advanced Warfare Development Program, or LWAD) to reduce the threat to the fleet posed by ultraquiet diesel submarines operating in the littorals and shallow seas like the Persian Gulf, the Straits of Hormuz, the South China Sea, and the Taiwan Strait. These submarines are widely distributed in the world's navies, including Axis countries like Iran and North Korea and other potentially hostile powers. In the 6 years that the program has operated, over 75% of the tests have been impacted by environmental considerations. In the last 3 years, 9 of 10 tests have been affected. One was cancelled entirely, and 17 different projects have been scaled back. We must work to achieve a more appropriate balance.

CLOSING

Sustaining military ranges and operating areas is of vital importance to the United States. So is the long-term sustainment of environmental quality. DoD is not trying to rollback environmental oversight—we are committed environmental stewards of our natural resources, and will continue to be so. These goals do not have to be mutually exclusive—in fact, some ranges can be seen as the last viable habitat for some surviving species. Mr. Chairman, we believe that military readiness can go hand in hand with environmental stewardship. Our challenge is to apply this principle to some of the unique problems associated with the MMPA and other statutes addressed in our Readiness and Range Preservation Initiative. We must continue to develop and sustain partnerships in order to do this. But most of all, we must always remember that our most important priority is to maintain the best trained, best equipped, most ready, and most effective military force in the world.

DoD is committed to a comprehensive approach to addressing encroachment and ensuring sustainable ranges. We must be clear in stating that there isn't any one quick fix. Our approach, our comprehensive strategy, must include multiple components and will be implemented over years, not months. DoD supports this subcommittee's efforts to improve the MMPA in the context of HR 4781. We also strongly support our proposed adjustment to the definition of "harassment" as contained in our recent Readiness and Range Preservation Initiative. Addressing the issue of harassment under the MMPA is an important piece of our overall effort to ensure our test and training capabilities remain the world's best. DoD looks forward to working with this Subcommittee and the Congress of the United States to assure our military readiness and satisfy our common goals. Thank you.